

# Virginia Administrative Code

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## CHAPTER 10

### PUBLIC PARTICIPATION GUIDELINES

#### Editor's Note

The second and third enactment of Acts 2006, c. 939 provided:

"2. That the Department of Mines, Minerals and Energy shall develop guidelines, in accordance with the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia), for purposes of carrying out the provisions of Chapters 9 (§67-900 et seq.) and 10 (§67-1000 et seq.) of Title 67 of the Code of Virginia.

"3. That the Department of Mines, Minerals and Energy, working with the Department of General Services, the State Council on Higher Education, and representatives of other agencies and institutions that construct and operate facilities shall analyze current energy performance standards that agencies and institutions use in facility design, make recommendations for changes to the current design and construction practices that will enhance energy performance and efficiency, and research facility energy performance and efficiency benchmarks and metrics that may be used to measure facility performance."

#### Code of Virginia References

Administrative Process Act, Va. Code Ann. §2.2-4000 et seq.

#### Federal Aspects

Administrative Procedure Act. 5 U.S.C.A. §551 et seq.

Freedom of Information Act. 5 U.S.C.A. §552.

Privacy Act of 1974. 5 U.S.C.A. §552a.

Publication of agency documents in the Federal Register and the Code of Federal Regulations. 44 U.S.C.A. §1501 et seq.

#### Research and Practice References

Administrative Procedure Acts, 2 Am. Jur. 2d, Administrative Law §§15-23.

Meetings and Records; Disclosure to Public, 2 Am. Jur. 2d, Administrative Law §§99-121.

Obstruction of justice, interference with administrative proceedings as, see 58 Am. Jur. 2d, Obstructing Justice §28 et seq.

Public Records, inspection and disclosure of, see 66 Am. Jur. 2d, Records and Recording Laws.

Rulemaking, 2 Am. Jur. 2d, Administrative Law §§152-245.

1A Am. Jur. Pleading and Practice Forms, Administrative Law.

#### Annotations

Libel and slander, privilege applicable to judicial proceedings open to the public, 38 A.L.R. 3d 1070.

Making public proceedings open to the public, validity, construction and application of statutes, 38 A.L.R. 3d 1070.

Administrative law, publication, generally, 77 A.L.R. Fed. 572.

Freedom of Information Act, what are "records" of agency which must be made available under Act, 153 A.L.R. Fed. 571.

Requests for expedited processing under Freedom of Information Act. 4 A.L.R. Fed. 2d 337.

Construction and application of Privacy Act provision requiring maintenance of agency records, 5 U.S.C.A. §552a(g)(1)(C). 8 A.L.R. Fed. 2d 575.

#### Law Reviews

Divining Regulatory Intent: The Place for a "Legislative History" of Agency Rules. Lars Noah, 51 Hastings L.J. 255 (2000).

Good Cause Exemption to Notice and Comment Rulemaking Requirements under the Administrative Procedure Act. Juan J. Lavilla, 3 Admin. L.J. 317 (1989).

Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet. Stephen M. Johnson, 50 Admin. L. Rev. 277 (1998).

4VAC25-10-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §1, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

#### 4VAC25-10-20. Purpose and authority.

A. These guidelines are designed to facilitate participation by the public in the formulation of regulations that are written to carry out the legislative mandates of the Virginia Department of Mines, Minerals and Energy, the Virginia Gas and Oil Board, the Board of Mineral Mining Examiners, and the Board of Coal Mining Examiners. Although required by law, these rulemaking procedures also reflect the department's commitment to an open forum for all points of view, and to a thorough analysis of many possible courses of action in regulatory development. These guidelines actually are true regulations themselves, as required by §2.2-4007 of the Code of Virginia. They have been adopted under the rulemaking authority of the director, the Virginia Gas and Oil Board, the Board of Mineral Mining Examiners, and the Board of Coal Mining Examiners, as prescribed in Title 45.1 of the Code of Virginia, and are subject to the same provisions of the Virginia Administrative Process Act (APA) as are all regulations. The Public Participation Guidelines apply to all actions to promulgate, amend or repeal any regulations except emergency regulations, which are covered by separate provisions, certain exempt activities specified in Articles 1 and 2 of the APA (§2.2-4000 et seq. of the Code of Virginia), and promulgation of regulations under the fast-track rulemaking process specified in §2.2-4012.1 of the APA.

B. Depending on the nature of the regulation, the Director of the Department, the Chief of the Division of Mines, the Virginia Gas and Oil Board, the Board of Mineral Mining Examiners or the Board of Coal Mining Examiners may be authorized to promulgate regulations.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §2, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

#### 4VAC25-10-30. Initiating the rulemaking process.

A. The director, chief, or board may initiate rulemaking at any time. However, he shall do so according to the provisions of these regulations, applicable executive orders, the Administrative Process Act, the Virginia Register Act, and the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

B. The director, chief, or board shall consider all written requests for regulatory change. Any individual or group may petition the director, chief, or board to promulgate, amend or repeal any regulation. The director, chief, or board shall consider all petitions and other written requests, but after careful consideration, may choose not to initiate rulemaking. To be considered, a petition shall contain:

1. The name, address and telephone number of the petitioner.
2. The new regulation, amendment or repeal action proposed by the petitioner.

3. The reasons for requesting the rulemaking.
4. The anticipated effects of making the requested regulatory changes, including costs to various parties.
5. The anticipated effects of not making the requested regulatory changes.

The director, chief, or board shall receive, consider, and respond to the petition in accordance with the provisions of §2.2-4007 of the Code of Virginia.

C. The director, chief, or board recommends that all petitioners include documentation to support their requests for rulemaking.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §3, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

#### 4VAC25-10-40. Identifying interested parties.

The department shall maintain current regulatory mailing lists composed of the names and addresses of parties who have expressed an interest in commenting on regulatory actions proposed by the director, chief, or board. The department may also maintain listings of e-mail addresses of interested parties. The department may periodically request those persons on a regulatory mailing list to indicate whether they wish to continue to be notified electronically or by regular mail, or be deleted from the list. When an e-mail notification is returned as undeliverable over more than one day, that person or organization will be deleted from the list. When regular mail is returned as undeliverable, that individual or organization will be deleted from the list. Parties may also sign up for the Commonwealth's Regulatory Town Hall website (<http://www.townhall.state.va.us>) to receive electronic notices of regulatory actions.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §4, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

#### 4VAC25-10-50. Notifying interested parties.

Whenever the department intends to consider a regulatory change, he shall notify interested parties, either electronically or in writing, of the intention to make such regulatory changes, using the following procedures:

1. The department shall compose a Notice of Intended Regulatory Action and a media release containing the information in the notice. Both documents shall specify a deadline for submitting written comments

regarding the intended regulatory action. If the director, chief, or board decides to conduct a public meeting, then the notice and the media release shall specify the date, time and location of that public meeting.

2. The director, chief, or board shall submit the Notice of Intended Regulatory Action to the Registrar of Regulations to be published in The Virginia Register on a date not less than 30 days prior to the end of the comment period.

3. The department shall post the Notice of Intended Regulatory Action on the Commonwealth's Regulatory Town Hall website.

4. Not less than 30 days prior to the end of the comment period, the department shall:

a. Deliver a copy of the Notice of Intended Regulatory Action to all parties on the regulatory mailing list who have expressed an interest in the type of regulations being considered;

b. Deliver a copy of the media release to at least one general circulation newspaper published in any area that is particularly affected by the regulation and to any other news media the director, chief, or board deems appropriate based on the subject matter of the regulation. These additional news media may include daily, semi-weekly, or weekly newspapers in areas particularly affected by the proposed regulatory action.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §5, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

4VAC25-10-60. Regulatory work committees.

Whenever the director, chief, or board initiates rulemaking, he shall solicit public participation in the development of regulations. The director, chief, or board may form a work committee to consider regulatory issues and advise the director, chief, or board and staff. Any work committee so formed may consist of (i) parties invited by the director, chief, or board who have agreed to serve on committees to develop regulations of the type being considered; or (ii) in cases where the director, chief, or board determines the proposed action does not warrant formation of a new committee, a statutorily created committee or advisory board of the department. In such cases, the department shall determine that the committee or board chosen has the expertise to review the type of regulation being considered. The Virginia Coal Mine Safety Board shall be the work committee for coal mine safety regulations under the conditions prescribed in §45.1-161.100 of the Code of Virginia.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §6, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

4VAC25-10-70. Formal review.

A. After consideration of comments received from the public, the department shall prepare a draft of the proposed regulatory changes and submit this draft to the director, chief, or board for review.

B. In accordance with the provisions of the Administrative Process Act, applicable executive orders, the Virginia Register Act, and Regulations of the Virginia Code Commission for Implementing the Virginia Register Act, the director, chief, or board shall submit the proposed regulation to, at a minimum, a 60-day public comment period by forwarding the appropriate documents to the Registrar of Regulations and the Commonwealth's Regulatory Town Hall website (<http://www.townhall.state.va.us>). The director, chief, or board will hold a public hearing during the public comment period

C. The director, chief, or board shall send notice of the proposed regulation to all parties on the regulatory mailing list who have expressed an interest in the type of regulation being considered. This notice shall explain the deadlines and procedures for submitting formal public comments under the Administrative Process Act and from where the public can obtain copies of the materials.

D. Ex parte communications outside of the time periods provided for public comment will not be accepted by the department. However, the department may request clarification of comments it received during the public comment periods.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §7, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

4VAC25-10-80. Adoption.

Upon expiration of the public comment period, the director, chief, or board shall carry out the remaining steps to adopt the regulations according to the provisions of the Administrative Process Act, applicable executive orders, the Virginia Register Act, and Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

#### Statutory Authority

§§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

#### Historical Notes

Derived from VR480-01-1 §8, eff. March 2, 1988; amended, Virginia Register Volume 10, Issue 16, eff. June 1, 1994; Volume 20, Issue 10, eff. February 26, 2004.

4VAC25-10-90. Agency secretary for purpose of appeal.

For appeals of regulatory or case decisions, pursuant to Rule 2A:2 of the Rules of the Supreme Court of Virginia, the agency herein names individuals to perform the function of agency secretary.

1. For appeals relating to Chapter 14.2, 14.3, 14.4 or 18 of Title 45.1 of the Code of Virginia, the division head of the Division of Mines (Chief) shall perform the functions of agency secretary.
2. For appeals relating to Chapter 14.4:1, 14.5, 14.6, 16, 18.1 or 21 of Title 45.1 of the Code of Virginia, the division head of the Division of Mineral Mining (Division Director) shall perform the functions of agency secretary.
3. For appeals relating to Chapter 15.1 or 22.1 of Title 45.1 of the Code of Virginia, the division head of the Division of Gas and Oil (Division Director) shall perform the functions of agency secretary.
4. For appeals relating to Chapters 17 and 19 of Title 45.1 of the Code of Virginia, the division head of the Division of Mined Land Reclamation (Division Director) shall perform the functions of agency secretary.

#### Statutory Authority

§§2.2-4007 and 45.1-161.3 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 22, Issue 6, eff. December 28, 2005.

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